

1 Rule 11-101. Supreme Court's rulemaking process.

2 Intent:

3 To establish a procedure for the adoption, modification and repeal of rules of procedure and
4 evidence, and rules governing the practice of law.

5 Applicability:

6 This rule shall apply to the Judiciary, the Utah State Bar, the Supreme Court's Advisory
7 Rules Committees, the Supreme Court's Board of Continuing Legal Education, the Supreme
8 Court's Ethics and Discipline Committee, and all other individuals and entities participating in
9 the rulemaking process.

10 Statement of the Rule:

11 (1) Statement of authority. Article VIII, Section 4 of the Utah Constitution provides that the
12 Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state
13 and shall by rule manage the appellate process. Section 4 further provides that the Court may
14 authorize retired justices and judges and judges pro tempore to perform judicial duties. Finally,
15 Section 4 provides that the Supreme Court shall by rule govern the practice of law, including
16 admission to practice law and the conduct and discipline of persons admitted to practice law. To
17 assist the Court with these responsibilities, the Supreme Court hereby establishes a procedure for
18 the adoption, repeal and amendment of rules of procedure and evidence; rules regulating judges
19 pro tempore and retired judges; and rules governing the practice of law.

20 (2) Creation and composition of advisory rules committees.

21 (2)(A) Establishment of committees. There is hereby established a Supreme Court advisory
22 rules committee in each of the following areas: civil procedure, criminal procedure, juvenile
23 court procedure, appellate procedure, evidence, civil jury instructions, criminal jury instructions,
24 and the rules of professional conduct.

25 (2)(B) Composition of committees. The Supreme Court shall determine the size of each
26 committee based upon the workload of the individual committees. The committees should be
27 broadly representative of the legal community and should include practicing lawyers,
28 academicians, and judges. Members should possess expertise within the committee's
29 jurisdiction.

30 (2)(C) Application and recruitment of committee members. Vacancies on the committees
31 shall be announced in the Utah Bar Journal. The notice shall specify the name of the committee

1 which has the vacancy, a brief description of the committee's responsibilities, the method for
2 submitting an application or letter of interest and the application deadline. Members of the
3 committees or the Supreme Court may solicit applications for membership on the committees.
4 Applications and letters of interest shall be submitted to the Supreme Court.

5 (2)(D) Appointment of committee members and chair. Upon expiration of the application
6 deadline, the Supreme Court shall review the applications and letters of interest and appoint
7 those individuals who are best suited to serve on the committee. Members shall be appointed to
8 serve staggered four-year terms. The Chief Justice shall select a chair from among the
9 committee's members. The chair shall be appointed to serve a two-year term and may be
10 appointed to serve additional two-year terms. Judges who serve as members of the committees
11 generally shall not be selected as chairs.

12 (2)(E) Vacancies. In the event of a vacancy on a committee due to death, incapacity,
13 resignation or removal, the Supreme Court, after consultation with the committee chair, shall
14 appoint a new committee member to serve for the remainder of the term to which appointed.

15 (2)(F) Absences. In the event that a committee member fails to attend three committee
16 meetings during a calendar year, the chair shall notify the Supreme Court of those absences and
17 may request that the Supreme Court replace that committee member.

18 (2)(G) Administrative assistance. The Administrative Office of the Courts shall coordinate
19 staff support to each committee, including the assistance of the Office of General Counsel in
20 research and drafting and the coordination of secretarial support and publication activities.

21 (2)(H) Recording secretaries. A committee chair may appoint a third-year law student, a
22 member of the Bar in good standing, or a legal secretary to serve as a recording secretary for the
23 committee. The recording secretary, shall attend and take minutes at committee meetings,
24 provide research and drafting assistance to committee members and perform other assignments
25 as requested by the chair.

26 (3) Responsibility of advisory rules committees.

27 (3)(A) Petitions. Petitions for the adoption, repeal or amendment of a rule of procedure,
28 evidence, or professional conduct, or a jury instruction may be submitted by any interested
29 individual to the Utah Supreme Court. Petitions shall be in writing, shall set forth the proposed
30 rule, amendment, or instruction, or the text of the rule or instruction proposed for repeal, and
31 shall specify the need for and anticipated effect of the proposal.

1 (3)(B) Committee agenda. The Supreme Court shall forward all submitted petitions to the
2 chair of the appropriate committee. All petitions shall be placed on the committee's agenda for
3 consideration and the committee shall provide written notification of committee action to all
4 individuals who file petitions.

5 (3)(C) Committee work. Committees shall meet as a whole, at the direction of the chair, to
6 discuss and vote upon individual and subcommittee recommendations and to prepare written
7 recommendations to the Supreme Court concerning petitions or committee-initiated proposals.
8 Minutes shall be taken at all meetings of the committee of the whole and shall be forwarded to
9 the Supreme Court's liaison for the committee.

10 (4) Public comment.

11 (4)(A) Submission of final rules recommendations. Each advisory rules committee shall vote
12 upon and finalize its recommendations and any proposed committee notes for public comment
13 and submit them to the Administrative Office of the Courts for publication and distribution.

14 (4)(B) Publication. The Administrative Office of the Courts shall publish the final committee
15 recommendations and any proposed committee notes for a 45-day comment period. The
16 comment period will run from the expected publication date of the law reporter service in which
17 the rules will appear. The purpose of the comment period shall be to solicit written or oral
18 comment concerning the committees' recommendations and to request input on the committees'
19 agenda.

20 (4)(C) Distribution. Copies of proposed rules and any advisory committee notes shall be
21 distributed as provided in Rule 2-203.

22 (4)(D) Comment. The committees have the discretion to limit public comment to oral or
23 written comment. Written comment shall be submitted to the Administrative Office of the
24 Courts. Oral comment shall be scheduled for hearing at the convenience of the committee during
25 the 45-day comment period.

26 (4)(E) Committee review. Upon the expiration of the comment period, the Administrative
27 Office of the Courts shall compile all of the written comment received and forward it to the
28 appropriate committee chair. The chair shall convene a meeting of the committee for the purpose
29 of reviewing the public comment and discussing and voting upon appropriate modifications to
30 the rules.

1 (4)(F) Transmittal. Once the committee has reviewed the public comment and voted upon the
2 final modifications to the proposed rules and committee notes, it shall submit a letter of
3 transmittal to the Supreme Court with a copy of the committee's final proposals, a summary of
4 the public comment and the committee's recommendations in response to the comment.

5 (5) Responsibility of Utah State Bar, or other entities, as to proposed amendments to rules
6 pertaining to the practice of law.

7 (5)(A) Petitions. Petitions for the adoption, repeal or amendment of rules or procedures
8 governing, affecting, or pertaining to the practice of law, other than the rules of professional
9 conduct, shall be filed with the Utah Supreme Court. Petitions shall set forth the proposed rule or
10 amendment or the text of the rule proposed for repeal and shall specify the need for and
11 anticipated effect of the proposal.

12 (5)(B) Publication. After preliminary review of the petition, the Supreme Court shall submit
13 the proposed rule or amendments to the Administrative Office of the Courts to be published for a
14 45-day comment period.

15 (5)(C) Distribution. Distribution of the proposed rule or amendments shall be as provided in
16 Rule 2-203.

17 (5)(D) Supreme Court review. Upon the expiration of the comment period, the
18 Administrative Office of the Courts shall compile all of the written comment received and
19 forward it to the Supreme Court.

20 (5)(E) Petitioner's review. Following receipt of the written comment, the Supreme Court
21 shall submit a copy of the comments to the entity who filed the petition seeking the rule change.
22 Petitioner shall review the comments and vote upon final modification to the rules or procedures.
23 Once petitioner has completed its review and voted upon the final modifications, it shall submit a
24 memorandum to the Supreme Court containing the petitioner's final proposals, a summary of the
25 public comment, and the petitioner's recommendations in response to the public comment.

26 (6) Responsibility of Supreme Court.

27 (6)(A) Court liaison. The Supreme Court shall designate a representative of the Court to
28 serve as a liaison to each advisory rules committee and to the Utah State Bar.

29 (6)(B) Advisory rules committee proposals. The Supreme Court shall consider committee
30 proposals and adopt, modify or reject those proposals. The Supreme Court shall notify

1 committee chairs and the Administrative Office of the Courts as to which proposals were
2 adopted, modified or rejected.

3 (6)(C) Petitions concerning rules or procedures pertaining to the practice of law. The
4 Supreme Court shall consider petitions and petitioners' memoranda and adopt, modify, or reject
5 the proposals made and enter an appropriate order.

6 (6)(D) Court-initiated rules. In its discretion, the Supreme Court may adopt rules of
7 procedure or evidence, rules regulating judges pro tempore and retired judges, rules governing
8 the practice of law or modify or repeal those rules upon its own initiative and without proposals
9 by the committees or the Utah State Bar. Court initiated rules shall be published for a 45-day
10 public comment period in accordance with Paragraph (3).

11 (6)(E) Effective date. Rules shall become effective 60 days after adoption by the Supreme
12 Court unless otherwise ordered.

13 (6)(F) ~~Emergency-Expedited~~ rulemaking. Notwithstanding the other provisions contained in
14 these rules, if the Supreme Court determines by an affirmative vote of the members of the
15 Supreme Court that it is in the best interest of the judiciary to suspend the rulemaking
16 procedures, the Supreme Court may take final action on a committee or Court-initiated proposal,
17 approve the proposal and provide for an immediate effective date. The Supreme Court shall
18 transmit a copy of the approved rule or committee note to each committee chair and the
19 Administrative Office of the Courts. The Administrative Office of the Courts shall publish the
20 rule for a 45-day comment period and submit any comments received during that period to the
21 Supreme Court for consideration. The Supreme Court may then ratify, amend or repeal the rule.

22 (6)(G) Publication. All rules adopted by the Supreme Court shall be published in the official
23 publication for Supreme Court Rules.